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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,789	11/08/2001	Jerome T. Hartlaub	11738.00038	2022
27581	7590	03/03/2004	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MS-LC340 MINNEAPOLIS, MN 55432-5604			THOMPSON, KATHRYN L	
			ART UNIT	PAPER NUMBER
			3763	3

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/005,789

Applicant(s)

HARTLAUB, JEROME T.

Examiner

Kathryn L Thompson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-23 is/are pending in the application.
- 4a) Of the above claim(s) 8-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rise (US 5,643,207) in view of Seckel (5,584,885). Rise teaches all of the claimed limitations except the medicament composition including living cells and a second medicament composition. Seckel teaches a medicament composition including living cells and a second medicament composition (Column 7, Line 17- Column 8, Line 12). It would have been obvious to one with ordinary skill in the art to use the teachings of Seckel to modify the invention of Rise in order to provide a therapeutic effect, such as regeneration, to more than one part of the body (Column 15, Lines 42-54).

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rise in view of Seckel further in view of Hadden (US 5,632,983) and Masters (US2003/0007991). Rise and Seckel teach all of the claimed limitations except wherein the medicament composition includes stem cells that may be later modified to produce an exogenous substance, wherein the exogenous substance is selected from the group consisting of enzymes, co-factors, neurotransmitters, and trophins. Hadden and Masters disclose wherein the medicament composition includes stem cells that may be

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later modified to produce an exogenous substance, wherein the exogenous substance is selected from the group consisting of enzymes, co-factors, neurotransmitters, and trophins. It would have been obvious to one with ordinary skill in the art to use the teachings of Hadden and Masters to modify the invention of Rise in view of Seckel since it is notoriously well known in the art to use stem cells as a medicament composition for therapeutic purposes.

Claims 7, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rise in view of Seckel, further in view of Medenica et al. Rise and Seckel teach all of the claimed limitations except wherein the reservoir contains a cell maintainer adaptive to maintain the cells in a dormant state, wherein the cell maintainer comprises a coating on the interior of the reservoir and wherein the cell maintainer comprises vitamin A derivative retinoic acid. Medenica et al discloses wherein the reservoir contains a cell maintainer adaptive to maintain the cells in a dormant state, wherein the cell maintainer comprises a coating on the interior of the reservoir and wherein the cell maintainer comprises vitamin A derivative retinoic acid (Column 4, Line 5- Column 6, Line 18). It would have been obvious to one with ordinary skill in the art to use the teachings of Medenica et al to modify the invention of Rise and Seckel since the aforementioned type of reservoirs are notoriously well known in the art for allowing cells to maintain a dormant state.

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### ***Response to Arguments***

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

Also, Examiner would like to point out that Masters claims priority to application No. 09/160,424, which gets the priority date of September 25, 1998. This date clearly precedes the priority date of the instant application.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn L Thompson whose telephone number is 703-

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305-3286. The examiner can normally be reached on 8:30 AM - 6:00 PM: 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KLT



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